

Application No. 09/980,106

Filed: April 9, 2002

TC Art Unit: 1745

Confirmation No.: 1182

REMARKS

Claims 1-4, 8, 11 and 14-19 have been rejected by the Examiner under 35 U.S.C. § 102. Claims 1-24 are pending in the present application and claims 25-28 are added herein. Support for newly added claims 25-28 can be found throughout the specification and claims as originally filed such that no new matter has been added. Claims 25-28 are also directed to subject matter deemed allowable by the Examiner. Accordingly, claims 1-28 will be pending upon entry of the amendments herein.

Any amendments to the claims should in no way be construed as acquiescence to any of the Examiner's rejections and was done solely to expedite the prosecution of the application. Applicants reserve the rights to pursue the claims as originally filed in this or a separate application(s).

Applicants respectfully request reconsideration and withdrawal of the Examiner's rejections in view of the above amendments and the remarks herein.

Allowable Subject Matter

Claims 5-7, 9-13 and 20-24 have been objected to as being dependent on a rejected base claim, although the Examiner has indicated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In accordance with the Examiner's indication, Applicants have added new claims 25-28, which are directed to the subject matter that has been deemed allowable. Claim 25, for example, includes all of the limitations of claims 5, 3 and 1. Similarly, claims 26 and 27 include all of the limitations of claims 6, 2 and 1 and of claims 12, 8 and 1,

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respectively. Claim 28 also includes all of the limitations of claims 21, 4, 19, 2 and 1. Thus, Applicants submit that newly added claims 25-28 are directed to allowable subject matter.

Claim Rejections 35 U.S.C. § 102

Claims 1-4, 8, 11 and 14-19 have been rejected under 35 U.S.C. § 102 as being anticipated by Australian Publication AU 9724945. Applicants respectfully traverse the foregoing rejections in view of the remarks herein.

Claim 1 is directed in part to a system having a first and second heat exchanger. The claimed system requires that these heat exchangers be in *series* and in the combustion path downstream of the fuel cell. Specifically, claim 1 states that "the system is further provided with a first heat exchanger and a second heat exchanger which, on the one hand, are *series* included in the combustion path downstream of the fuel cell." This *series* arrangement of the first and second heat exchanger is not disclosed or taught by the cited reference.

The cited reference by comparison teaches a heat exchanger configuration in which the first heat exchanger is *concentrically* arranged about the second heat exchanger. See page 2, second paragraph. The reference also teaches away from the claimed system by disclosing that its *concentric* heat exchanger arrangement is an advantage of that invention. Namely, the reference states that it "is advantageous to arrange the prereformer at the centre [sic] of the second heat exchanger and the first heat exchanger *concentrically* about the second." See page 2, second paragraph. It is well understood to one of ordinary skill in the art that process conditions and heat

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transfer requirements depend on the specific arrangement or configuration of heat exchangers. Thus, a system incorporating heat exchanges that are configured in *series* is fundamentally different from a process having heat exchangers that are *concentrically* arranged.

Although the Examiner alleges that the cited reference discloses the required spatial orientation or interrelationship of the claimed system, Applicants respectfully contend that the described *series* and *concentric* heat exchanger arrangements are patentably distinct such that claim 1 is not anticipated. Anticipation requires that a reference disclose each element of the claim under consideration. It is also required that the reference disclose each element of the claimed invention as arranged in the claim. With regard to claim 1, the cited reference clearly does not teach each element of the claimed system nor does it disclose the recite elements as arranged. In particular, the reference does not teach a first and second heat exchanger that are configured in *series*. Moreover, the cited reference requires a *concentric* arrangement of heat exchangers, which is entirely different from the *series* arrangement recited by the claimed system. Accordingly, Applicants submit that the claimed system cannot be anticipated by the cited reference.

As described, the cited reference discloses that its *concentric* heat exchanger arrangement is an advantage of that invention. It is settled law that a reference cannot be interpreted in a manner that would obviate the advantages that it discloses or teaches. Thus, it is also respectfully asserted that the cited reference cannot be properly applied to anticipate the claimed system.

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Based on the foregoing remarks, Applicants respectfully request reconsideration and withdrawal of all of the Examiner's rejections under 35 U.S.C. § 102.

CONCLUSION

Based on the entry of amendments and remarks presented herein, reconsideration and withdrawal of all the rejections and allowance of the application with all pending claims are respectfully requested.

The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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